

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 87211(d) and Handbook

Specific Purpose:

This regulation and handbook reference are adopted for clarity and consistency and to align with the financial distress reporting and notification requirements specified in Health and Safety Code (HSC) section 1569.686(a); allow the California Department of Social Services (CDSS) to levy civil penalties as specified in HSC section 1569.686(c); or take other appropriate action for failure to report specified events per HSC section 1569.686(b). The HSC section 1569.686 was added to statute as a result of Senate Bill (SB) 897 (Chapter 376, Statutes of 2011).

Factual Basis:

It is necessary to adopt this regulation and handbook reference in order to implement SB 897 (Chapter 376, Statutes of 2011) and necessary for consistency with HSC section 1569.686(a). The statute requires that a licensee notify specified parties in writing if the licensee experiences any of the specified financial distress events. The statute specifies the parties to be notified; the timeframe in which to notify; and the financial distress events to be reported. In addition, HSC section 1569.686(c) specifies that CDSS may levy a civil penalty for failure by the licensee to report financial distress events or take other appropriate action as per HSC section 1569.686(b).

Post-Hearing Modification:

Following the public hearing, CDSS is making changes to the regulation for clarity and consistency purposes.

The CDSS is amending the regulation language in Section 87211(d) to strike superfluous language referencing HSC section 1569.686(a). For clarity and ease of reading, CDSS is striking language pertaining to the civil penalty, moving the substance of this regulatory language to Section 87211(f) and adding the words "of the failure to provide the required notification" to more clearly represent statutory requirements. For clarity and consistency, CDSS is renumbering Section 87211(d)(1) to 87211(e).

For clarity, CDSS is adding Sections 87211(d)(1)-(5), which adds statutory language specifying the five events indicating financial distress listed in HSC section 1569.686(a). For ease of the user, the content of the statute has been incorporated into Sections 87211(d)(1)-(5). Additionally, to eliminate redundancy, CDSS is removing the Handbook reference to HSC section 1569.686(a).

Section 87211(d)(1)

Specific Purpose:

This regulation is adopted for clarity and consistency and to align with the financial distress notification requirements to potential residents specified in HSC section 1569.686(a).

Factual Basis:

It is necessary to adopt this regulation in order to implement SB 897 (Chapter 376, Statutes of 2011) and necessary for consistency with HSC section 1569.686(a). The statute specifies that licensees are to disclose in writing to any potential residents prior to admission any of the specified financial distress events. This regulation seeks to provide further clarification that notification to the potential resident or their representative shall be no later than prior to the resident or their representative signing the admission agreement.

Post-Hearing Modification:

Following the public hearing, CDSS is making a change to the factual basis in the Statement of Reasons for clarity purposes. Additionally, for clarity and consistency purposes, CDSS is making a change to this regulation.

The Factual Basis of the Statement of Reasons is being amended to clarify that HSC section 1569.686(a) does not specify how licensees are to notify any potential residents prior to admission of any of the specified events that indicate financial distress. This regulation seeks to prescribe a process that notification to the potential resident or their representative shall be in writing and no later than prior to the resident or their representative signing the admission agreement. It is necessary to adopt this regulation in order to clarify SB 897 (Chapter 376, Statutes of 2011), which added HSC section 1569.686(a).

This regulation has been renumbered from Section 87211(d)(1) to 87211(e) to accommodate the addition of Sections 87211(d)(1)-(5). The CDSS is amending the regulation language in Section 87211(e) to strike superfluous language referencing HSC section 1569.686(a) and adding the words "Section 87211 (d)" to clarify the accurate regulatory cross reference.

Final Modification:

The proposed language in Section 87211(e) was reworded to be consistent with HSC section 1569.686.

Section 87211(e)

Specific Purpose:

This regulation is adopted for clarity and consistency with HSC section 1569.686(b). Upon notification by licensee of specified financial distress event(s), CDSS shall take appropriate action in response to the event(s) reported.

Factual Basis:

It is necessary to adopt this regulation in order to implement the provisions of SB 897 (Chapter 376, Statutes of 2011). The HSC section 1569.686(b) requires that at the time that the Department is notified by the licensee of financial distress events, CDSS is required to initiate corrective action through compliance plans, noncompliance conferences or other action deemed appropriate by CDSS. It is incumbent upon CDSS to take such action in order to protect the health and welfare of the residents in care; allow for the opportunity to research alternative placement; and prepare residents for possible relocation. Should CDSS become aware of the occurrence of any of the specified events in HSC section 1569.686(a) without notification from the licensee within the timeframe specified, CDSS may take appropriate action against the licensee including the issuance of the civil penalty specified in HSC section 1569.686(c).

Final Modification:

This subdivision has been renumbered and reworded, but CDSS has decided to ultimately remove this subdivision because it is a restatement of law [HSC section 1569.686(b)]. The reporting requirements outlined in Section 87211 are otherwise duplicated from the statute for the benefit and convenience of the regulated provider community; however, Section 87211(g) pertains only to Department action in the event a licensed provider does not comply with the reporting requirements. This section as currently placed in the regulations does not provide more specificity than what is broadly stated in the statute. Therefore, the addition of this text does not meet the necessity and non-duplication rule and is superfluous. For this reason, it is determined that the removal of this text is justified.

Section 87211(f)

Specific Purpose/Factual Basis:

This amendment is for the purposes of clarity and consistency in the renumbering of Section 87211(d) to 87211(f).

Final Modification:

Following the public hearing and 15-day renote periods, this subdivision has been renumbered from Section 87211(f) to 87211(g).

Section 87211(g)

Specific Purpose/Factual Basis:

This amendment is for the purposes of clarity and consistency in the renumbering of Section 87211(e) to 87211(g).

Final Modification:

Following the public hearing and 15-day renote periods, this subdivision has been renumbered from Section 87211(g) to 87211(h).

Final Modification Subsequent to the 45-Day Text:

CDSS added a Subdivision 87211(f), which stated that CDSS shall not waive the reporting requirements as stated in Section 87211(d). CDSS is striking this language and relocating it to a new Handbook note. The Handbook reference is added for clarity, consistency, and ease of access by the regulated provider community and licensing staff, who are responsible for monitoring licensee compliance of laws and regulations for RCFEs. CDSS has the authority to waive regulatory requirements but not statutory requirements. It has been the practice of CDSS for the benefit and convenience of the regulated provider community and licensing staff to add statutory requirements in pertinent regulatory updates. This Handbook information provides clarification to users that the reporting requirements in Section 87211(d) reiterates statutory mandates and, therefore, cannot be waived. Providing informational text as a Handbook reference is at the discretion and formatting preference/style of CDSS.

b) Local Mandate Statement

These regulations do not impose a mandate upon local agencies and school districts for certain costs mandated by the State. There are no reimbursable state-mandated costs under Section 17500 et seq., of the Government Code (GC).

c) Statement of Alternatives Considered

In developing the regulatory action, CDSS did not consider any other alternatives than the one proposed because this was the most effective. No reasonable alternative has been presented for review.

The CDSS determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

d) Statement of Significant Adverse Economic Impact On Business

The CDSS has not received any facts, evidence, documents, testimony or other evidence to indicate there has been any significant, statewide adverse economic impact on business related to these laws. In addition, the proposed regulations are implementing state law. If there were to be any adverse economic impact on business, it would be a result of the passage of the enacting laws, not the regulations themselves. As such, CDSS determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

e) Testimony and Response

These regulations were considered as Item # 1 at the public hearing held on September 6, 2017, in Sacramento, California. Written and oral testimony was received from the following during the 45-day comment period from July 21, 2017 to 5:00 p.m. September 5, 2017.

Comments from the California Assisted Living Association (CALA)

1. Section 87211(d)(1)

Comment:

The CALA suggests correcting the factual basis for the regulatory change, as they believe that requiring the disclosure be made in writing is not an issue and is a reasonable way to provide the notice. They would like to clarify that the statute does not require the disclosure be made in writing and is silent on how the notification should be made.

Response:

The CDSS appreciates this comment and agrees that the Statement of Reasons should be amended to make clear that the statute does not require the disclosure be made in writing and is silent on how the notification should be made. Therefore, the Statement of Reasons has been amended to clarify that the regulation seeks to provide clarification that notification to the potential resident or their representative shall be in writing and no later than prior to the resident or their representative signing the admission agreement.

Comments from LeadingAge, CA

1. ORD # 0217-07

Comment:

Jedd Hampton on behalf of Leading Age, CA provided oral testimony in support of this regulations package.

Response:

The CDSS appreciates the support of Leading Age, CA regarding this regulation package.

Comments from California Advocates For Nursing Home Reform (CANHR)

1. Section 87211(d)

Comment:

The CANHR recommends this section to be amended to specify the five financial distress events triggering the notification requirements of HSC section 1569.686(a).

Response:

The CDSS appreciates this comment and agrees that, for ease of the user, the statutory language should be incorporated in the regulation. The regulation has been amended to specify the five financial distress events.

f) 15-Day Renotice Statement

Pursuant to GC section 11347.1, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. The following testimony was received as a result of the 15-day renotice.

Comments from CALA

1. Comment:

The CALA appreciates CDSS' decision to accept their previous comment on the Factual Basis of the Statement of Reasons and has no further concerns.

Response:

The CDSS thanks CALA for their comment.

Comments from CANHR

1. Section 87211(f)

Comment:

The CANHR proposes amending this section to read: "(f) Failure to comply with section 87211(d) ~~and~~ or (e) may result in a civil penalty of one hundred dollars (\$100) for each day of the failure to provide the required notification, not to exceed two thousand dollars (\$2,000) and other actions deemed appropriate by the Department, as specified in Health and Safety Code section 1569.686(b)."

Response:

CDSS agrees that further clarification is needed to specify that violation of 87211(d), or 87211(e), or both subsections, may result in a civil penalty. The regulation has been amended to strike the word "and," add a comma after 87211(d), and add the words "or 87211(e), or both."

g) Second 15-Day Renotice Statement

Pursuant to GC section 11347.1, a second 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. The following testimony was received as a result of the 15-day renotice.

Comments from CALA

1. Section 87211(f)

Comment:

"The Department states the factual basis for adding this regulation is 'to make clear that the requirements of Section 87211(d) are statutorily required pursuant to HSC section 1569.686 and cannot be waived, pursuant to Section 87209.' This language is unnecessary because the language is in statute. The proposed language cannot be found anywhere else in Title 22 regulations and adding it here sets a bad precedent. The Department already has the authority to deny any waiver request.' CALA suggests 87211(f) be deleted."

Response:

The Department acknowledges the comment and recognizes this regulation references statutorily mandated requirements; however, it does not have the authority to waive the statutorily mandated reporting requirements. In addition, it has been the practice of the Department for ease of reference of our regulated community to embed statutory requirements within regulations. Thus, the Department finds, on balance, the addition of this language is necessary for effective regulatory implementation.

2. Sections 87211(g) and (h)

Comment:

"It is confusing that HSC sections 1569.686(b) and (c) have been merged in a couple places in 87211(g) and (h), instead of addressing them as they are in statute. Section (b) addresses the Department's role in dealing with financial distress. Section (c) addresses the penalty for failure to comply with the notification, and in the event a resident is relocated without notice and suffers transfer trauma, which was not addressed. CALA suggests the proposed regulation simply reiterate the statute to avoid confusion."

Response:

CDSS accepts the suggestion to distinguish these conditions separately by reorganizing the regulation text for clarity.

h) Third 15-Day Renotice Statement

Pursuant to GC section 11347.1, a third 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. No testimony was received.